

MR653-1432

Serial Number: 10/774,707

Reply to Office Action dated 10 July 2006

REMARKS/ARGUMENTS

At the outset, the courtesies extended by the Examiner and his Supervisory Patent Examiner at the 21 September 2006 interview are appreciatively noted. At the interview the reference cited by the Examiner in the 10 July 2006 Office Action and the certain other art of record in this case were discussed in light of the clarifying amendments proposed to the Claims by the undersigned Attorney, as set forth herein.

Responsive to the 10 July 2006 Office Action and the discussions had at the interview, Claims 1, 6, and 12 are amended for further prosecution with the other pending Claims. It is believed that with such amendment of Claims, there is a further clarification of their recitations.

In the Office Action, the Examiner provisionally rejected Claims 1-5 under statutory double patenting grounds, in view of Claims 11-15 of co-pending Application 10/885,542. The Examiner also set forth a provisional rejection of Claims 6, 12, 15-16, and 19 on non-statutory obviousness-type double patenting grounds over Claims 1,7-8, and 11-18 of the co-pending '542 Application.

It is believed that the amendments to the Claims incorporated into this Application, as well as those incorporated into the co-pending '542 Application now obviate the provisional rejection on statutory grounds. It is believed that the amendments to the Claims in both cases likewise obviate the non-statutory obviousness-type double patenting grounds for provisional rejection; nonetheless,

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a Terminal disclaimer is concurrently filed in the co-pending '542 Application (which is a Continuation-In-Part of this Application) with respect to the subject Patent Application. This leaves no question that the obviousness-type non-statutory double patenting rejection is now obviated.

Also in the Office Action, the Examiner rejected Claims 1-6, 12, 15-16, and 19 under 35 U.S.C. § 102(b) as being anticipated by the Davis, et al. reference. In setting forth this rejection, the Examiner correlated Davis, et al.'s incorporation of cornstarch in its thermal body wrap device with the degermed corn recited in the Claims.

As each of the newly-amended independent Claims 1, 6, and 12 now more clearly recites, Applicant's thermal device includes among its combination of features the incorporation of "degermed corn disposed substantially in individual kernel form." Such degermed corn is initially provided in this form with "a moisture content within approximately 8% - 15%," as the Claims clarify. This serves in "facilitating reheating of said degermed corn," as the Claims further clarify, such that thermal energy may be effectively applied to the body of a person or animal, or to some other surface.

Turning to the Davis, et al. reference, the reference discloses a thermal body wrap and identifies "thickeners such as cornstarch" (column 9; line 5) in a long list of components for its chemically formulated exothermic composition 18. This exothermic composition 18 is hardly "disposed substantially in individual

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kernel form," as Applicant's degermed corn is. It is instead quite processed and lab-formulated as "a particulate mix of chemical compounds" that "is densely packed or compressed into a tablet" to "substantially fill[] the available cell volume" of a heat cell 16 (column 7, lines 48-49; column 4, lines 47-48 and 42-43). Davis, et al. thus fails to disclose any "degermed corn disposed substantially in individual kernel form," let alone any degermed corn having such moisture content as also now more clearly recited in each of the newly-amended independent Claims 1, 6, and 12.

It is respectfully submitted, therefore, that the Davis, et al., even when considered in light of the other references of record in this case, fails to disclose the unique combination of elements now more clearly recited by Applicant's pending Claims for the purposes and objectives disclosed in the subject Patent Application.

It is now believed that the subject Patent Application has been placed fully in condition for allowance, and such action is respectfully requested.

Respectfully submitted,
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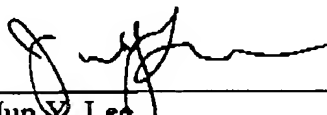
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Date



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